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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,452	03/30/2004	Michael Lamsfuss	ZM337/03002	4667
27868	7590	01/24/2008		
JOHN F. SALAZAR MIDDLETON & REUTLINGER 2500 BROWN & WILLIAMSON TOWER LOUISVILLE, KY 40202			EXAMINER ELVE, MARIA ALEXANDRA	
			ART UNIT 1793	PAPER NUMBER
			MAIL DATE 01/24/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/813,452

Applicant(s)

LAMSFUSS, MICHAEL

Examiner

M. Alexandra Elve

Art Unit

1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 25-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 25-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sano et al. (USPN 6,705,372).

Sano et al. discloses a tube guide (figure 7) having two guide claws (42 i.e. jaws) which have an angled side and a guide body (41) with a placement groove (41a i.e. base plate). In addition the tube guide has springs (43). The tube guide is adjustable by means of the springs to accommodate tubes of differing diameters. Figure 10 shows the plunger (104) and the jaws (101), which detect the height of the plunger with a tube holding sensor. Figure 11 shows a holding groove, which is provided between the guide clamps (101) and is continuous and flush and is formed in the fixed clamp body.

Sano et al. does not teach a base plate which is movable with respect to the base. It is the examiner's position that it would have been obvious to one of ordinary skill in the art at the time of the invention to make the base adjustable/movable because it would yield greater mobility to the clamping system and greater flexibility for the holding of a workpiece.

Claims 1-13 & 25-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sano et al. as stated in the above paragraph and further in view of Comulada et al. (USPN 5,905,566).

Sano et al. does not specifically teach the use of laser machining.

Comulada et al. discloses the laser ablation of a substrate, which uses a chuck with a leveling device.

It would have been obvious to one of ordinary skill in the art at the time of the invention to use laser machining as taught by Comulada et al. on the article in the Sano et al. guide tube clamp device because it is merely a type of fabrication.

Intended use has been continuously held not to be germane to determining the patentability of the apparatus. In re Finsterwalder 168 USPQ 530, In re Casey 152 USPQ 235, Ex parte Masham 2 USPQ 2d 1647, Ex parte Thibault 164 USPQ 666.

Claims 1-13 & 25-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sano et al. as stated in the above paragraph and further in view of Comulada et al. and Baum (USPN 5,458,330).

Sano et al. does not specifically teach the use of laser machining.

Comulada et al. discloses the laser ablation of a substrate, which uses a chuck with a leveling device.

It would have been obvious to one of ordinary skill in the art at the time of the invention to use laser machining as taught by Comulada et al. on the article in the Sano et al. guide tube clamp device because it is merely a type of fabrication.

Baum discloses the use of laser cutting in the formation of a baseball with a logo.

It would have been obvious to one of ordinary skill in the art at the time of the invention to use laser cutting on the baseball bat, as taught by Baum on the Sano et al. and Comulada et al. article because it is merely a work application of the leveled tube guide device.

Response to Arguments

Applicant's arguments filed 10/31/07 have been fully considered but they are not persuasive.

Applicant argues that Sano et al. fails to teach bats of varying diameter at a preselected elevation. Intended use has been continuously held not to be germane to determining the patentability of the apparatus. In re Finsterwalder 168 USPQ 530, In re Casey 152 USPQ 235, Ex parte Masham 2 USPQ 2d 1647, Ex parte Thibault 164 USPQ 666.

Applicant argues that camming surface and jaws movement is not taught. The examiner respectfully disagrees because 42 moves with respect to 41/41a.

Applicant argues that Sano et al. fails to teach the base plate movement of at least one jaw a preselected distance. The examiner respectfully notes that the workpiece in Sano et al. causes the motion of the jaws, which is a functional equivalent motion.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Alexandra Elve whose telephone number is 571-272-1173. The examiner can normally be reached on 7:30-4:00 Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jonathan Johnson can be reached on 571-272-1177. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

January 18, 2008.

/M. Alexandra Elve/
M. Alexandra Elve
Primary Examiner 1793